IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1103 OF 2004

Shri Dnyanu Bhau Pawar & Anr. ..Appellants.
Vs.
Shri Dinkar Krishna Pawar & Ors. ..Respondents.

Mr.N.J.Patil, adv. for the Appellants.
Mr.S.M.Oak, adv. for the Respondent Nos.1 & 2.

CORAM : J.H.BHATIA, J.
DATE : SEPTEMBER 19, 2007.

P.C.:

1. Heard the learned counsel for the Parties.

2. The appellants are the original defendants. The appellants and the respondent nos.3 and 4 are the legal heirs of the original defendant Dnyanubhau Pawar. Respondent nos.1 and 2 are the original plaintiffs. Admittedly, Krishna father of the plaintiffs and defendant Dnyanu were real brothers. Property in dispute is City Survey No.1712 and 1713 of Ghorpade Wada at Miraj. It is the case of the plaintiffs that land was purchased by their father Krishna from his own earnings for a consideration of Rs.50/- in the year 1937 from the then Government of Ichalkaranji and house was constructed on the same. Their father was serving in an ice factory. The defendant being younger brother was allowed to reside in the suit property. However,

when the plaintiffs asked the defendant to hand over the possession, he refused. Plaintiffs filed suit for possession of the said property. The defendant contended that it was joint family ancestral property and in the family arrangement, this property was given to him alongwith Krishna while some other property at Bhuyachiwadi was given to third brother and, therefore, he was living in the suit house as owner. He further contended that in any case, his possession over the house since 1947 was known to the plaintiffs and their father and his possession has become adverse to the title. All the contentions of the defendant came to be rejected by the trial Court and the trial Court came to conclusion that the property was purchased by Krishna father of the plaintiffs and the defendant was living in the suit house with permission of his brother. In the result, the suit came to be decreed. Defendant preferred Regular Civil Appeal No.58 of 1995. Appeal was also dismissed by the learned District Judge, Sangli and hence, the legal representatives of the deceased defendant have preferred the second appeal.

3. The learned counsel for the parties have taken me through the record. The Courts below have noted that Krishna had taken education up to 7th standard. After that he had joined service with an ice factory and admittedly atleast for two years prior to purchase

of this property, he was working in the ice factory. The property was purchased in the name of Krishna for a consideration of Rs.50/- and taking into consideration the fact that he was already serving for two years, he was having sufficient funds to purchase that property. The Courts below came to conclusion that there is no material to show that it was ancestral property or it was purchased from the joint family resources. The Courts below noted that even according to the admission of the defendant when this property was purchased, he was not earning and he was being looked after by his brother Krishna. His marriage was also performed by Krishna. It shows that the defendant had no resources to purchase this property or to contribute anything to purchase that property. This evidence also shows that being elder brother Krishna was looking after the defendant with love and affection and, therefore, it could be believed that the defendant was allowed to live in the suit house with his permission. Even though the defendant pleaded that he was in occupation since 1947 to the knowledge of the plaintiffs and, therefore, he is in adverse possession, evidence does not go beyond showing that he is possession since 1947. There is nothing to show that at any time by his conduct or otherwise he had disputed the title of his brother. There is no material to show as to when and how his possession became adverse to the title of his

brother Krishna. Taking into consideration these circumstances as well as the concurrent findings of the Courts below, I find that no substantial question of law is involved in the present appeal.

4. The learned counsel for the defendant/appellant tried to contend that this property is declared notified to be slum area and, therefore, in view of Section 22 of The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, nobody can institute any suit or proceeding for obtaining any decree or order for the eviction of an occupier from any building or land in a slum area. It may be noted that in the written statement no such plea was taken. It appears that during the first appeal, argument was tried to be advanced on this line. Judgment of the learned District Judge reveals that sufficient opportunity was given to the defendant/appellant to produce material in support of his contention but no such material was produced. During the second appeal, the learned counsel produced one Government Gazette dated 9th August, 1984 for perusal of this Court in support of his plea. In that Gazette, certain properties in Ghorpade Wadi of Miraj are declared to be slum. However, suit property bearing City Survey No.1712 and 1713 do not find place in that gazette notification. That notification falsifies the

contention of the defendant/appellant that it is slum area.

5. In view of the above circumstances as there is no substantial question of law involved in the matter, the second appeal stands dismissed summarily.

[J.H.BHATIA, J.]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1388 OF 2004
IN
SECOND APPEAL NO.1103 OF 2004

Shri Dnyanu Bhau Pawar & Anr. ..Applicants.
Vs.
Shri Dinkar Krishna Pawar & Ors. ..Respondents.

Mr.N.J.Patil, adv. for the Applicants.
Mr.S.M.Oak, adv. for the Respondent Nos.1 & 2.

CORAM : J.H.BHATIA, J.
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1. As the appeal itself has been dismissed, this application does not survive and stands disposed off.

(J.H.BHATIA, J.)